that of the person involved. It can hardly be said that this decision is contrary to that in the principal case. While it may perhaps safely be said that there was sufficient proximity in the ages in the *Pearl* v. *Omaha* case, *supra*, to justify the court in holding there was no prejudice; still by parity of reasoning it would seem that the court in the principal case was justified in holding there *was* prejudice in permitting tables applicable only to persons of ten years or older to be admitted in evidence where the age in question was but twenty-seven months. The court stated that according to the Carlisle table the jury may have been misled as to the child's expectancy to the extent of about twelve years.

BANKRUPTCY—EFFECT OF COMPOSITION ON LIABILITY OF SURETY ON BANKRUPT'S NOTE.—Defendant was an accommodation endorser on a note of a corporation which went into bankruptcy. The plaintiff filed a claim on the note in question against the corporation's estate in bankruptcy, and thereafter was one of the creditors who voted for a composition, agreeing to and accepting a *pro-rata* dividend under the terms thereof. The composition was confirmed and the bankrupt discharged. This action is now brought seeking to hold the defendant as surety for the balance remaining unpaid on the note in question. *Held*, that the discharge of a principal debtor by a composition in bankruptcy, does not discharge a surety of the debtor, even as against the creditor who assented to the composition. *Easton Furniture Mfg. Co.* v. *Caminez* (N. Y. Sup. Ct. App. Div.) 27 A. B. R.29, Oct., 1911.

The general rules governing this question are clear and well defined. First, "in case two persons are liable for a debt, one as principal and one as surety, a voluntary release by the creditor of the principal with knowledge of the relation existing between the debtors, discharges the surety." *Third Nat. Bank* v. *Hastings*, 134 N. Y. 501 at 503. See also I BRANDT, SURETYSHIP & GUARANTY, § 146 and citations. See LOVER, NEGOTIABLE INSTRUMENTS LAW, Ed. 2, p. 332. CRAWFORD'S ANNOTATED NEGOTIABLE INSTRUMENT LAW, Ed. 3, p. 138. BUNKER, NEGOTIABLE INSTRUMENTS, p. 134 and citations. Second, "a discharge of a principal by act of law, in which the creditor does not participate, will not release the surety." I BRANDT, SURETYSHIP & GUARANTY, § 150. LOVELAND, BANKRUPTCY, § 296. COLLIER, BANKRUPTCY, Ed. 8, p. 305. BANKRUPTCY ACT OF 1898, § 16. In view of these principles, the question here resolves itself into this: Is a composition agreement in bankruptcy a discharge by agreement of the parties, or by operation of law? The latter view is maintained in the principal case, declaring that though there is but scant authority, the weight of it confirms this proposition, citing *Mason & Hamlin Organ Co.* v. *Bancroft*, 1 Abb. N. C. 415; *Guild* v. *Butler*, 122 Mass. 498, quoting English Rule and citations, and attempting to distinguish the cases cited to the contrary. *Matter of Benedict* (D. C. N. Y.) 18 A. B. R. 604; *Phelps* v. *Borland*, 103 N. Y. 406; *Third Nat. Bank* v. *Hastings*, 134 N. Y. 501. The basis for the former view seems to be that the discharge itself being purely by operation of law, "certainly will not of itself operate to release a surety, whether it be granted upon surrender of the requisite amount of assets, upon composition, or upon the assent of the creditors."

"But the statute (referring to Sec. 16 of the BANKRUPTCY ACT OF 1898), does not undertake to declare what effect the acts of creditors before the discharge, or in aiding the bankrupt to obtain a discharge, shall have, and consequently the effect of such acts is to be left to be determined upon general principles." *Calloway* v. *Snapp*, 78 Ky. 561. Sec. 16 of the Bankruptcy Act of 1898, the basis for the latter view, being in derogation of the common law, must be strictly construed, *In re Benedict, supra*, and when so construed applies to the discharge in bankruptcy, and does not refer to, nor have in view, any of the parties effecting a release of liability in law or in equity. LOVELAND, BANKRUPTCY, § 296, p. 850; *In re McDonald*, Fed. Cas. No. 8,753. Thus viewed, it is considered that it is the act of the creditor in consenting to the proposed composition that in fact effects the release of the principal debtor's liability on the note, regardless of his subsequent discharge in bankruptcy, and therefore, since the principal is released by agreement with the creditor, without the knowledge or consent of his surety or indorser, and not by operation of law; under the well recognized principle of law heretofore first referred to, the surety or indorser is discharged from his liability thereby. *In re Benedict, supra*, at 606 and 607. COLLIER, BANKRUPTCY, Ed. 8, p. 305. No case as yet is conclusive on either side, but the weight of reason seems to be with the latter view, and against the principal case.

BANKS AND BANKING—COLLECTIONS—INSOLVENCY OF COLLECTING BANK.—H bank sent an accepted draft to N bank for collection. N bank received in payment a check from D, the acceptor, on itself in the regular course of business, D being a depositor with the collecting bank and having on deposit a sum in excess of the check, and the collecting bank surrendered the draft to D, and remitted its own check to H bank, which was not paid because of the failure of the remitting bank. It was insolvent at the time of this transaction, but this fact was not known to its officials or the depositor. P, the drawer, brought action against D to recover the purchase price for which the draft was drawn. *Held*, that the above transaction constitutes a payment of the draft as between the drawer and the acceptor. *Pollak Bros.* v. *Niall-Herin Co.* (Ga. 1911), 72 S. E. 415.

When a bank receives a draft for collection, its relation to the owner is that of agent, until it credits him with the proceeds, and so becomes the principal debtor; and this charge of relation cannot be effected after the bank has failed. *First National Bank* v. *Bank of Monroe*, 33 Fed. 408. An agent to collect a draft has no authority to receive in payment anything but money. If it takes a check, it is agent of the drawer in collecting the check, and not until the money is obtained has it fulfilled its duty as agent of the holder of the paper. *Ward* v. *Smith*, 7 Wall. 447; *Farmers' Bank & Trust Co.* v. *Newland*, 97 Ky. 464; *Bank* v. *Cummings*, 89 Tenn. 609; *Morris* v. *Eufaula National Bank*, 106 Ala. 383; *Donogh* v. *Gillespie*, 21 Ont. App. 292; *Hazlett* v. *Commercial Nat. Bank*, 132 Pa. 118; *Tootle* v. *Cook*, 4 Colo. App. 111; *Bank of Antigo* v. *Union Trust Co.*, 149 Ill. 343; 1 MORSE, BANKS AND BANKING, Ed. 4, § 247. But the court in the principal case said that "the circumstances under which the draft was paid in this case are equivalent to the actual re-